STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DIAMOND DENISE SIMMONS and SEMAJ DARCELL SMITH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CLARENCE SIMMONS,

Respondent-Appellant,

and

VALENCIA DENISE SMITH and EDDIE BASSETT,

Respondents.

UNPUBLISHED
May 10, 2005

No. 258787
Wayne Circuit Court
Family Division
LC No. 00-392539

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child, Diamond Denise Simmons, under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (k)(ii). We affirm.

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence indicated that respondent-appellant failed to visit with Diamond after December 2003 and did not attend any court hearings after that time. Under these circumstances, the trial court did not clearly err by finding that respondent-appellant deserted the minor child for ninety-one days and failed to seek custody of her. MCL 712A.19b(3)(a)(ii). A parent's failure to visit or communicate with a child is considered desertion. *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991). We note that respondent-appellant did advise the foster care worker that that he wanted to care for Diamond and asked what effect his coming to court to try to plan for her would have on his outstanding criminal warrant. However, a parent's stated desire to plan for a child does not constitute "seeking custody" when the parent fails to attend court hearings or otherwise plan for the child. See *In re Mayfield*, 198 Mich App 226, 228-229, 235; 497 NW2d 578 (1993). The same

evidence justifies the trial court's conclusion that respondent-appellant abandoned the minor child, MCL 712A.3(b)(k)(i), and we find no clear error in that conclusion.

Termination under MCL 712A.19b(3)(c)(i) was also supported by the evidence. The conditions of adjudication relating to respondent-appellant were his failure to provide support, plan for, or visit Diamond. When the termination petition was filed on May 14, 2004, respondent-appellant had not visited Diamond since December 2003, a period of four and one half months. Although he expressed a desire to plan for Diamond, respondent-appellant did not take necessary steps to do so, such as completing parenting classes, attending court hearings, and visiting the minor child. Clearly at least two of the conditions of adjudication, the failure to visit and plan for the child, continued to exist at the time of the termination trial. The trial court was also warranted in finding no reasonable likelihood that these conditions would be rectified in the reasonable future. From his first appearance in this matter, respondent-appellant's efforts to regain custody have been substantially compromised by his ongoing involvement with the criminal system, including his incarceration for parole violation, and his subsequent absconding from a halfway house. Where respondent-appellant's withdrawal from efforts at reunification as well as his absence from the termination trial were directly related to continuing efforts to evade warrants for his arrest, it was certainly reasonable to infer that respondent-appellant's continuing efforts to evade the criminal justice system would prevent him from addressing and resolving the conditions of adjudication in the reasonable future.

Respondent-appellant also failed to provide proper care and custody for Diamond by failing to support or plan for her. MCL 712A.19b(3)(g). Respondent-appellant's failure to comply with the treatment plan is evidence of his inability to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Finally, his history of withdrawal from efforts to obtain custody in favor of evading the criminal justice system indicates no reasonable likelihood that he will be able to provide proper care and custody for the minor child in the reasonable future, and termination under MCL 712A.19b(3)(g) was not clear error. The same evidence that indicates there is no reasonable likelihood that respondent-appellant will be able to provide proper care and custody for the minor child also supports the conclusion that there is a reasonable likelihood that she will be harmed if returned to him. MCL 712A.19b(3)(j). Respondent-appellant's history of continual criminal involvement, exacerbated by his noncompliance by violating probation and absconding from a halfway house, clearly indicates that he cannot provide a minimally stable environment for the minor child. Respondent has repeatedly made choices that are detrimental to the child, including his decision to cease visiting, attending parenting classes, or seeking custody of her while he evaded criminal warrants. Under these circumstances, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the child, MCL 712A.19b(5).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter